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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2546 OF 1996

M/s. Rubydent, 1225/1,
Shivaji Nagar, Ferguson College
Road, Pune - 411 004. ... Petitioner

V/s

1. Shri Vithoba Dhondiba Mare
& anr. ... Respondent

Mr. Sachin Chavan i/by S.S. Kulkarni for the petitioner.

Mr. Sanjeev J. Rairkar for the respondent No.1.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 30TH NOVEMBER, 2006.

ORAL JUDGMENT:

1. The petitioner has challenged the award Part II passed by the First Labour Court, Pune in Reference (IDA) No. 103 of 1992. The Labour Court by this award has granted reinstatement with continuity of service and full back wages to the respondent workman.

2. The petitioner had chargesheeted the respondent workman for certain acts of misconduct. These included disobedience of lawful and reasonable orders of the superiors, wilful damage to the property of the employer,

habitual neglect of work, gross negligence and commission of an act subversive of discipline. An enquiry was instituted against the respondent workman. The enquiry officer held the respondent guilty of charges levelled against him. The respondent workman, therefore, approached the authorities under the Industrial Disputes Act and obtained a reference was registered as Reference (IDA) No. 103 of 1992. After the pleadings were complete, the Labour Court considered, whether the enquiry held against the workman was fair and proper. By an Award Part-I dated 2.3.1995, the learned Court held that there was no procedural defect with the enquiry instituted against the respondent workman.

3. Evidence was led thereafter by both, the petitioner and the respondent workman. By an Award Part-II dated 22.12.1995, the learned Judge concluded, after reappreciating the evidence on record that, the findings recorded by the enquiry officer were perverse. The Labour Court held that all the witnesses including the Manager of the petitioner had conceded that besides breaking of tubes, the respondent workman was not guilty of any other misconduct. In fact, the employer’s witness had agreed before the enquiry officer that it was only because the respondent had raised certain grievances about the working conditions in the establishment that

employer had taken action against him. The Labour Court, after reappreciating the evidence on record, came to the conclusion that except for damaging the tubes, which in the opinion of the Labour Court, was trifling act, no other misconduct had been committed by the respondent workman. Despite this, the Labour Court granted reinstatement with continuity of service and full back wages.

4. Aggrieved by Award Part II of the Labour Court, the petitioner has filed the present petition.

5. Having considered the submissions made on behalf of the petitioner and the respondent, I find that there is no perversity in the findings recorded by the Labour Court. However, once the Labour Court had come to the conclusion that the respondent workman had committed the misconduct of damaging the tubes, the Labour Court ought to have levied some punishment on the workman. The Labour Court has not found it necessary to levy any punishment which, in my opinion, is incorrect when the misconduct is proved.

6. In view of the facts and circumstances of this case, I find that the respondent workman ought to have been deprived of a certain amount from the back wages which

were payable to him. While admitting the petition, this Court had directed the petitioner to deposit the back wages in the Labour Court. The respondent workman was at liberty to withdraw 50% of this amount. Accordingly, the petitioner deposited Rs.78,000/- and the respondent has withdrawn the 50% of this amount as permitted by the order of this Court. The balance amount Rs.39,000/- is still available with the Labour Court. The respondent workman is, therefore, entitled to withdraw Rs.30,000/- from this amount together with the accrued interest. The remaining amount shall be paid over to the petitioner by the Labour Court with accrued interest.

7. Petition disposed of.

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